

EXHIBIT

"A"

**CITY OF ROUND ROCK AGREEMENT
FOR PURCHASE OF
COMPUTER HARDWARE AND RELATED SOFTWARE PRODUCTS
WITH
DELL MARKETING, L.P.**

THE STATE OF TEXAS

§

CITY OF ROUND ROCK

§

KNOW ALL BY THESE PRESENTS:

§

COUNTY OF WILLIAMSON

§

COUNTY OF TRAVIS

§

This Agreement is for the purchase of computer hardware and related software products and related services, and is referred to herein as the "Agreement." This Agreement is made and entered into on this the 22nd day of the month of January, 2019, by and between the CITY OF ROUND ROCK, TEXAS, a home-rule municipality whose offices are located at 221 East Main Street, Round Rock, Texas 78664, referred to herein as the "City," and DELL MARKETING, L.P., whose offices are located at One Dell Way, Round Rock, Texas 78682, referred to herein as "Vendor." This Agreement supersedes and replaces any previous agreement between the named parties, whether oral or written, and whether or not established by custom and practice.

RECITALS:

WHEREAS, City desires to purchase computer hardware and related software products and services, and City desires to obtain said goods from Vendor; and

WHEREAS, Vendor is an approved vendor of the Texas Department of Information Resources ("DIR"); and

WHEREAS, City desires to purchase certain goods and related services from Vendor through DIR Contract No. DIR-TSO-3763 as set forth herein; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1.0 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Vendor whereby City agrees to obtain specified goods and/or services and Vendor is obligated to provide specified goods and/or services. This Agreement includes any exhibits, addenda, and/or amendments thereto.

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Goods** mean the specified supplies, materials, commodities, or equipment.

E. **Services** means work performed to meet a demand or effort by Vendor to comply with promised delivery dates, specifications, and technical assistance specified.

F. **Vendor** means Dell Marketing L.P. (including any Dell Authorized Resellers) and any successors or assigns.

2.0 EFFECTIVE DATE; TERM

A. This Agreement shall be effective on the date it has been signed by both parties hereto, and shall remain in full force and effect unless and until it expires by operation of the term stated herein, or until terminated or extended as provided herein.

B. This Agreement shall expire on January 10, 2024.

3.0 SCOPE OF WORK

A. The goods and related services which are the subject matter of this Agreement are described generally in the attached Exhibit "A," incorporated herein by reference for all purposes.

B. The parties agree to enter into a Participation and Purchase Agreement as a part of this Agreement, attached as Exhibit "B," and incorporated herein by reference for all purposes.

C. This Agreement shall evidence the entire understanding and agreement between the parties and shall supersede any prior proposals, correspondence or discussions.

D. Vendor shall satisfactorily provide all deliverables and services described in Exhibit "A" within the contract term specified. A change in the Scope of Services or any term of this Agreement must be negotiated and agreed to in all relevant details, and must be embodied in a valid Supplemental Agreement as described herein.

4.0 COSTS

A. City agrees to pay for goods and related services during the term of this Agreement at the pricing set forth in Exhibit "A" to Vendor, including any Dell Authorized Resellers.

B. The City is authorized to pay Vendor an amount not-to-exceed **Four Hundred Thousand and No/100 Dollars (\$400,000.00) per year** for a total not-to-exceed amount of **Two Million and No/100 Dollars (\$2,000,000.00)** for the term of this Agreement.

5.0 INVOICES

All invoices shall include, at a minimum, the following information:

1. Name and address of Vendor;
2. Purchase Order Number;
3. Description and quantity of items received; and
4. Delivery dates.

6.0 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of City's current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the services as determined by City's budget for the fiscal year in question. City may effect such termination by giving Vendor a written notice of termination at the end of its then-current fiscal year.

7.0 PROMPT PAYMENT POLICY

Prompt Payment Act. In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by City to Vendor will be made within thirty (30) days of the date City receives goods under this Agreement, the date the performance of the services under this Agreement are completed, or the date City receives a correct invoice for the goods or services, whichever is later. Vendor may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b). This Prompt Payment Policy does not apply to payments made by City in the event:

1. There is a bona fide dispute between City and Vendor, a contractor, subcontractor, or supplier about the goods delivered or the service performed that cause the payment to be late; or

2. There is a bona fide dispute between Vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
3. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
4. The invoice is not mailed to City in strict accordance with any instruction on the purchase order relating to the payment.

8.0 GRATUITIES AND BRIBES

City may, by written notice to Vendor, cancel this Agreement without liability to Vendor if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Vendor or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Vendor may be subject to penalties stated in Title 8 of the Texas Penal Code.

9.0 TAXES

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Vendor's charges.

10.0 INSURANCE

Vendor shall meet all insurance requirements set forth in DIR Contract No. DIR-TSO-3763 and shall provide proof of said coverage to City. City shall be listed as an additional insured.

11.0 CITY'S REPRESENTATIVE

City hereby designates the following representative authorized to act in its behalf with regard to this Agreement:

Heath Douglas
Director of Information Technology
221 East Main Street
Round Rock, TX 78664
(512) 218-5508
hdouglas@roundrocktexas.gov

12.0 DEFAULT

If Vendor abandons or defaults under this Agreement and is a cause of City acquiring the specified goods elsewhere.

Vendor shall be declared in default of this Agreement if it does any of the following and fails to cure the issue within thirty (30) days of receipt of written notice:

A. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;

B. Becomes insolvent or seeks relief under the bankruptcy laws of the United States, and is unable to perform its material obligations under the Agreement.

13.0 TERMINATION AND SUSPENSION

A. In the event of any uncured default by either party, the non-defaulting party has the right to terminate the affected portions of this Agreement for cause, upon ten (10) days' written notice to the defaulting party following the cure period.

B. In the event City terminates under this section, Vendor shall discontinue performance of any affected services and/or delivery of goods. The City will be responsible only for amounts due and owing for the affected goods and/or services up through the date of termination.

14.0 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

A. Vendor, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel and will not boycott Israel during the term of this contract. The signatory executing this Agreement on behalf of Vendor verifies Vendor does not boycott Israel and will not boycott Israel during the term of this Agreement.

15.0 ASSIGNMENT AND DELEGATION

The parties hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

16.0 NOTICES

A. All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

1. When delivered personally to recipient's address as stated in this Agreement; or

2. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Vendor:

Dell Marketing, L.P.; Dell Legal Department
One Dell Way; RR-1
Round Rock, Texas 78682

Notice to City:

City Manager
221 East Main Street
Round Rock, TX 78664

AND TO:

Stephan L. Sheets, City Attorney
309 East Main Street
Round Rock, TX 78664

B. Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Vendor.

17.0 APPLICABLE LAW; ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

18.0 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between Vendor and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing.

19.0 DISPUTE RESOLUTION

City and Vendor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

20.0 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no

way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

21.0 MISCELLANEOUS PROVISIONS

A. Standard of Care. Vendor represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

B. Time is of the Essence. The parties agree that, from time to time, certain unique transactions may have special requirements relative to timing and, accordingly, the parties will identify those transactions and exercise best efforts to accomplish those transactions within the stated timeframe. Other timing requirements will be met in a commercially reasonable manner.


C. Binding Agreement. This Agreement shall extend to and be binding upon and inure to the benefit of the parties' respective heirs, executors, administrators, successors and assigns.

D. Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

[Signatures on the following page.]

IN WITNESS WHEREOF, City and Vendor have executed this Agreement on the dates indicated.

Dell Marketing, L.P.

By: 
Printed Name: Dudley McClellan
Title: Commercial Counsel, Dell Legal
Date Signed: January 22, 2019

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

For City, Attest:

By: _____
Sara L. White, City Clerk

For City, Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney

Exhibit "A"

Texas Department of Information Resources Contract Number: DIR-TSO-3763 APPENDIX C, PRICING INDEX

Dell Marketing, L.P.

For general purchases, Dell will provide the minimum discounts identified below for select offerings generally described in the below table. The discounts are based on Dell's then current Manufacturer Suggested Retail Pricing (MSRP) and Dell reserves the right to change the MSRP (which would also change the discounted selling price) at any time to apply to future orders.

Category	Products Classifications	Direct from Dell	Dell Prime with Resellers
		DIR Customer Discount % from Dell MSRP	
A	Band 1 Dell Desktops; Band 2 Dell Laptops	16.00 %	16.00 %
A	Band 4 Dell Servers; Band 5 Dell Storage	14.50 %	14.50 %
A	Networking, IoT, Printers, Monitors, Tablets, Projectors, Dell-branded Customer Kits	14.50 %	14.50 %
F	Selected Printer Related Products/Accessories	3.00 %	3.00 %
H	Ships Fast Pre-Configured Latitude, OptiPlex, Workstations	6.00 %	6.00 %
M	Select Third Party Software (e.g. Adobe Perpetual Licenses)	6.00 %	N/A
M	Select Third Party Software Licenses & Peripherals	12.00 %	N/A Software 12.00 % Hardware
M	Some Dell-branded memory, SonicWall, Wyse, RSA Security, Compellent, Credant	12.00 %	12.00 %
S	Imaging, Latitude, PowerEdge server, Vostro and XPS Notebooks; Selected Latitude; Selected PowerEdge; Power Connect; EqualLogic; Monitors	4.00 %	4.00 %
U	Spare Parts	0%	0%
V	Standard upgrade/ downgrade options with discounts that vary based upon the system in which the item is installed	Same discount as system	Same discount as system

Exhibit "A"

Texas Department of Information Resources Contract Number: DIR-TSO-3763 APPENDIX C, PRICING INDEX

X	Select Third Party Software Maintenance Support, Subscriptions and Renewals & Peripherals	2.00 %	2.00 %
ZZSZ1	On-site – Next Business Day On-site (extended yrs.), Critical Care On-site Service (all yrs.); other services	0%	0%

Dell's published Manufacturer Suggested Retail Price List is at <http://ftpbox.us.dell.com/slg/weekly/dellpricereport.pdf>

In the event Customers purchasing products and services under this Contract negotiate more advantageous pricing or participate in special promotional offers (included those that provide additional discounted or specially priced and bundled options), the above discounts will not be applicable. The final Customer-approved Dell Quote or Dell procurement response will contain the applicable pricing for the ordered individual offerings or for bundled offering configurations or special offers. Dell will work with DIR and with Customers to create pre-approved bundled configurations at agreed pricing to be available for stated time periods. Customer understands that the bundled offering or special promotional offerings may include other discounted or reduced cost or no additional cost products and services and the Customer may compare the bundled offering and any additional services to the line item pricing and minimum discounts to the Dell Manufacturer Suggested Retail Price List.

Exhibit "B"

Participation and Purchase Agreement under Texas DIR-TSO-3763

between

Dell Marketing L.P.
One Dell Way
Round Rock, TX 78682

And

City of Round Rock
221 East Main Street
Round Rock, Texas 78664 ("Customer")


Effective as of the date of the last signature below (the "Effective Date"), this Agreement includes the following documents: The Texas Department of Information Resources (DIR) contract with Dell Marketing, L.P., DIR-TSO-3763 ["DIR Contract" – Dell Contract Code 75AHH], and, if applicable, its successor contract, which are incorporated into and made part of this Participation and Purchase Agreement (the "Agreement"). The terms and conditions of the DIR Contract will govern the purchases and orders and any statement of work (SOW) that are provided to the **City of Round Rock** ("City" and "Customer") from **Dell Marketing, L.P.** ("Dell") that are made during the term of the current DIR Contract and any successor DIR Contract with Dell of computer hardware and related products, including software licensing arrangements, and services available from Dell under the DIR Contract (which has a current initial term through January 10, 2020, with two automatic two-year renewals, unless either party terminates earlier as provided in the DIR Contract). The Customer is an eligible purchaser of the offerings from Dell available under the DIR Contract. The DIR Contract documents are publicly available at:

<http://dir.texas.gov/View-Search/Contracts-Detail.aspx?contractnumber=DIR-TSO-3763>

The term of this Agreement shall be effective as of the date of last signature below or upon receipt of a purchase order from the City for the offerings from Dell.

Per the DIR Contract [DIR Contract, Section 9. Y. – amending Appendix A. Section 10. Vendor Responsibilities, N. Required Insurance Coverage], Dell shall secure and maintain the minimum of insurance coverage specified in the Dir Contract and provide proof of such insurance coverage to City listed as additional insured. The required coverage must remain in effect throughout the term of the Agreement between Dell and City.

City and Dell agree to reference the current DIR Contract [DIR-TSO-3763] and the current Dell Contract Code [75AHH] for quotations, purchase orders, and SOWs that are for offerings available from Dell under the DIR Contract. The parties also agree to cooperate to resolve any administrative issues for proper processing of orders and billing related to this Agreement. This Agreement is entered into on behalf of the parties by their below authorized representatives:

Dell Marketing L.P.
Signature : 
Name : Dudley McClellan
Position : Commercial Counsel, Dell Legal
Date : <i>January 22, 2019</i>

City of Round Rock
Signature :
Name :
Position :
Date :

We Appreciate Your Business!